

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-02115

17 FEB 1998

[REDACTED]

COUNSEL: NONE

[REDACTED]

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

He be considered for promotion to the grade of Major by Special Selection Board (SSB) for the Calendar Year 1998 (CY98B) Major Board.

APPLICANT CONTENDS THAT:

His declination of his promotion package was unjustly held up during a volley of policy changes which delayed his removal from the promotion list and he was unable to meet his second major's board in April 1998. He believes these circumstances warrant his consideration on the next available board.

In support of the appeal, applicant submits a personal statement, Message dated 13 February 1998 and 31 March 1998.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving on extended active duty in the grade of captain.

Applicant was considered and selected for promotion to the grade of major by the CY97C Selection Board which convened on 16 June 1997.

On 21 October 1997, applicant declined promotion to major.

On 17 March 1998, applicant's commander initiated removal action for failure to withdraw his declination statement within the required four month time frame.

On 14 July 1998, Secretary of the Air Force directed applicant's name be removed from the CY97C major promotion list.

On 6 April 1998, the CY98 Major Board convened and applicant was not eligible to meet this board. He was still considered a select off of the CY97C selection board.

OPR profile since 1992 follows:

<u>PERIOD ENDING</u>	<u>EVALUATION OF POTENTIAL</u>
29 Jul 92	Meets Standards
29 Jul 93	Meets Standards
16 Feb 94	Meets Standards
16 Feb 95	Meets Standards
8 Oct 95	Meets Standards
26 Apr 96	Training Report
26 Apr 97	Meets Standards
31 Dec 97	Meets Standards
2 Jul 98	Meets Standards

AIR FORCE EVALUATION:

The Chief, Officer Promotion & Appointment Section, Directorate of Personnel Program Management, HQ AFPC/DPPPO, reviewed this application and states per AFI 36-2501, Officer Promotions and Selective Continuation, paragraph 3.17, an officer who fails to withdraw a declination statement and accept promotion after four months from the date the declination statement was signed, will be removed from the promotion list. Failure to withdraw a declination within the allotted time constitutes presumptive evidence of the diminution of the officer's future potential and a lack of professional qualification for his or her advancement and constitutes a basis for removal action. Applicant's four month waiting period ended 21 February 1998.

Officers removed from a promotion list, will again be considered for promotion to the next higher grade, provided they are still on active duty and remain eligible as the approved removal action constitutes a nonselection.

From the period October 1997 through March 1998, all removal actions based on declination were placed on hold. This was based on a pending policy change being worked at the Air Staff. On 13 February 1998, Sec AF and AF/CC approved a return to the previous declination policy, i.e., officers will no longer be removed from a promotion list based solely on declining a promotion. On 31 March 1998, it was announced that officers who declined promotion prior to the 13 February 1998 policy change would fall under the old rules and could therefore be removed from a promotion list. Based on applicant's date of declination, he fell under the old rules.

The applicant was ineligible to meet the CY98B Central Major Selection Board which convened on 6 April 1998 as applicant's name had not been removed from CY97C board. To be eligible, the applicant must have been removed from the list by 5 April 1998. SSBs are convened to consider officers when they did not meet a board or were improperly considered by one or more central selection boards. In order to meet a SSB for a central selection board, you must have been eligible as of the board convening date to meet that board. Applicant was not eligible to meet the board and is therefore, not eligible for supplemental consideration. Pursuant to 10 U.S.C. 619(d)(1), an officer who is selected for promotion, and whose name has been recommended for removal from a promotion list but whose promotion removal has not yet been effected, is not eligible to be considered for promotion to the next higher grade by a selection board convened under Section 611(a) or Title 10. Once that officer is removed from the promotiori list, he or she then "continues to be eligible for consideration for promotion". 10 U.S.C. 629(c)(1). Therefore, they recommend denial of applicant's request.

A complete copy of the Air Force evaluation is attached at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluation and states that he request his case be dismissed on the grounds that the 14 September 1998 SSB has already convened. Late notification is due to a no-notice temporary duty (TDY). He physically received the package from SAF/MIBR on 23 September 1998 after returning from TDY. Mail from his overseas location averages about two weeks to get stateside

Applicant's complete response is attached at Exhibit: E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After reviewing the evidence of record, we are not persuaded that the applicant has been the victim of either error or injustice. The detailed comments provided by the Air Force adequately address applicant's contentions and we are in agreement with the Air Force's comments and recommendation. In view of the above and in

the absence of evidence to the contrary, we find no basis upon which to recommend favorable action on this application. Based on policy changes, all removal actions based on declination were placed on hold from October 1997 through March 1998. On 13 February 1998, Secretary of the Air Force approved a return to the previous declination policy, i.e., officers will no longer be removed from a promotion list based solely on declining a promotion. It was announced on 31 March 1998, that officers who declined promotion prior to the 13 February 1998 policy change would fall under the old rules and could therefore be removed from a promotion list. Applicant fell under the old rules based on his date of declination. Applicant was ineligible to meet the CY98B Major Board, because his name had not been removed from the CY97C Major Board. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT :

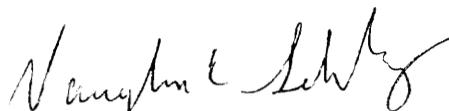
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 17 December 1998, under the provisions of AFI 36-2603:

Mr. Vaughn E. Schlunz, Panel Chair
 Mr. Loren S. Perlstein, Member
 Mr. Kenneth L. Reinertson, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 16 July 1998, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPPO, dated 17 August 1998.
- Exhibit D. Letter, SAF/MIBR, dated 31 August 1998.
- Exhibit E. Applicant's Response, dated 25 September 1998.


 VAUGHN/E. SCHLUNZ
 Panel Chair